Realty Maintenance, Inc., d/b/a National Cleaning Company *and* Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO. Case 31-CA-9571

December 16, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 24, 1980, and October 27, 1980, Administrative Law Judge Michael D. Stevenson issued the attached Decision and Errata, respectively, in this proceeding. Thereafter, the General Counsel and the Charging Party, herein called the Union, filed exceptions and supporting briefs and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found that Respondent did not violate Section 8(a)(5) and (1) by its refusal to furnish the Union with certain requested information regarding the Respondent's relationship with two other companies, General Building Services, herein General Building, and Maintenance Development Ecology, Inc., herein Maintenance Development. We disagree.

Respondent is engaged in providing maintenance services to various nonretail business enterprises. Respondent and the Union have had a bargaining relationship over a number of years. They are signatories to the Maintenance Contractors Agreement, herein sometimes called the agreement. This agreement ran from March 1, 1978, to February 28, 1981, and contains, among other things, provisions prohibiting subcontracting and requiring Respondent to make certain contributions to the employees' health and welfare plan.

Richard Davis is the Union's executive vice president. In the past he has also served as an organizer and, later, as a business representative for the Union. Davis testified that he has for several years had a business relationship in his official capacities with Respondent and its employees. With regard to events leading to the filing of these charges, Davis testified that he personally received approximately five or six complaints/reports from members employed by Respondent between about 1976 and October 1979.[1] One complaint was from a member named Ramirez.[2] Ramirez told Davis that, although he was hired by Respondent, he was receiving a lower hourly wage rate than Respondent's other employees. In addition, Ramirez showed Davis some of his pay stubs on which appeared the name of Maintenance Development.[3] Davis testified that he did not look into Ramirez' complaint himself, but, instead, referred Ramirez to the Union's grievance counselor, Murakami, who was keeping a file on this activity.[4] Regarding the four or five other conversations, Davis testified that, although he remembered having them, he could not quote verbatim what was said during any one conversation. Instead, Davis testified that several members, who were under the impression that they were employees of Respondent, complained to him about wage problems. Specifically these employees told Davis that they were being paid at a lower rate than under the contract. In addition, members complained about their inability to collect health and welfare benefits as required by the agreement. In this connection, Davis testified that these members told him that a check with the health and welfare office in the union hall revealed that they were not being covered by Respondent. In addition to Maintenance Development, employees cited General Building in connection with these complaints.

Based on his receipt of these complaints, Davis sent two letters to Respondent on October 19 requesting that Respondent furnish the Union with information concerning Maintenance Development and General Building, respectively. In these letters, Davis alleged that the Union had reason to believe that Respondent was in violation of certain enumerated articles of the Maintenance Contractors Agreement.[5] Specifically, the Union alleged that Maintenance Development/General Building were performing services that were previously performed by Respondent's employees, and that a relationship (financial or management) was set up be-

[1] All dates are in 1979 unless indicated otherwise.

[2] Davis testified that the conversation occurred 1 to 2 years prior to the hearing date, placing it somewhere in the period from May 1978–May 1979.

[3] Davis had some difficulty recalling the precise name, referring to the company as "Maintenance Development Technology or Ecology Incorporated."

[4] Murakami was not called to testify during the hearing.

[5] The text of the two letters was identical except that in the letter concerning Maintenance Development the Union cited art. XVI (the main provision containing contributions to the health and welfare fund) while that article was not cited in the letter concerning General Building. Among the provisions enumerated in both letters are the subcontracting provision and a provision requiring Respondent to make contributions into the employees' health and welfare trust fund on behalf of employees who are on vacation. Also included was a general reference to "possibly other Articles." The text of the letter concerning General Building is set forth in full in the Administrative Law Judge's Decision.

tween Respondent and those companies with the object to circumvent provisions of the agreement and undermine the Union. The Union invoked the grievance procedure under the agreement, and, in order to resolve the grievance, requested certain information about Respondent's business relationship with the above-mentioned companies.

In a letter dated October 29, Respondent told Davis that the Union's requests were being studied and a response would be sent by November 9. In a followup letter dated November 8, Respondent refused to comply with the Union's requests stating that it believed the Union was not entitled to such information under the agreement and that the requests were grounded upon an invalid provision in the agreement. Finally, in a letter dated December 5, Respondent, while adhering to its refusal to provide the requested information, stated that "during the period in question [Respondent] did not subcontract janitorial services to a General Building Service Company, a Maintenance Development Ecology, Inc. or to any other company."

On November 20, the Union filed the instant charges.

It has long been held that an employer has an obligation, as part of its duty to bargain in good faith, to provide information needed by a bargaining representative for the proper performance of its duties.[6] This obligation to furnish information extends beyond the period of the contract negotiations and applies to labor-management relations during the term of an agreement, including the evaluation of grievances.[7] Further, an employer cannot refuse to furnish requested information on the basis that the bargaining representative seeks information regarding matters outside the scope of the bargaining unit represented by the union.[8] Rather, an employer is obligated to supply such information when the information sought meets the requisite standard of relevance set forth in *Ohio Power Company*,[9] and reaffirmed in *Doubarn Sheet Metal, Inc.*[10] The following language from *Ohio Power Company*,[11] sets forth the standard of relevance to be applied:

> Where the information sought covers the terms and conditions of employment within the bargaining unit, thus involving the core of the employer-employee relationship, the standard of relevance is very broad, and no specific showing is normally required; but where the request is for information with respect to matters occurring outside the unit, the standard is somewhat narrower (as where the precipitating issue or conduct is the subcontracting of work performable by employees within the appropriate unit) and relevance is required to be somewhat more precise. . . . The obligation is not unlimited. Thus where the information is plainly irrelevant to any dispute there is no duty to provide it.

We find that the Union here met the standard for relevancy. With respect to Maintenance Development the fact that Ramirez, though hired by Respondent, was being paid by Maintenance Development at a lower rate than Respondent's other employees would raise substantial questions as whether Respondent was complying with the collective-bargaining agreement or whether it was instead giving the work to Maintenance Development. The complaints by other employees that they were not being paid the contract rate although they thought they were employees of Respondent could only have added to the Union's concern. Further raising doubts as to whether Respondent was complying with the collective-bargaining agreement was that employees of Respondent were being told by the health and welfare office in the union hall that Respondent was not covering them. In this context we conclude that the Union had a sufficient basis for its request for information with respect to Respondent's relationship with Maintenance Development.

The picture with respect to General Building is a little less clear. The testimony with respect to that company is that employees mentioned it in connection with their complaints. However, in view of the specific indication that employees who were hired by Respondent were paid by at least one other company (Maintenance Development) along with the reference to General Building by employees in connection with the complaints to the Union discussed above, we conclude that the Union had a sufficient basis for requesting information concerning General Building as well.

Next we turn to whether the particular items of information requested in the letter are relevant. Items 1-9, 12, and 13 of the Union's request are directed, in general, towards obtaining information as to the specific relationship between Respondent and Maintenance Development and/or General Building. Items 10 and 11 of the Union's request seek information tending to establish whether Respondent has assigned or contracted work to Maintenance Development and/or General Building.

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[6] *N.L.R.B.* v. *Truitt Manufacturing Co.*, 351 U.S. 149 (1956).
[7] *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432 (1967).
[8] *N.L.R.B.* v. *Curtiss-Wright Corporation, Wright Aeronautical Division*, 347 F.2d 61 (3d Cir. 1965).
[9] 216 NLRB 987 (1975).
[10] 243 NLRB 821 (1979).
[11] 216 NLRB at 991.

Evidence establishing commonality of officers, directors, supervisors, and the like would make tenable an assertion by the Union that Respondent had the power to transfer employees and work to these other companies in order to circumvent the provisions of the Maintenance Contractors Agreement, including payments to the health and welfare plan and paying the agreed-upon wage rate. Evidence establishing that General Building or Maintenance Development was using Respondent's equipment or supplies or that General Building or Maintenance Development was performing work previously performed by Respondent would lend some credence to a union contention that Respondent had violated the subcontracting provision of the agreement. Thus all the information requested concerns the relationship between Maintenance Development/-General Building and Respondent and could make tenable the Union's contentions as to violations of the contract by the Respondent. Thus the Union has adequately stated what information it seeks and the purpose for which it is to be used. Accordingly, the Union, having made a showing of relevance for the information sought, is entitled to receive that information.

Furthermore, contrary to the Administrative Law Judge, we find that the evidence produced by the General Counsel was not too remote in time to be relevant. The request for information was made between 5–13 months after Davis' conversation with Ramirez.[12] This occurred during the then current collective-bargaining agreement. In fact all of the membership complaints received by Davis were made during the effective term of the parties' collective-bargaining agreement. This agreement contained no provision for limiting the time for the filing of grievances thereunder. As the Union was not barred from filing grievances on these complaints, Davis' testimony regarding his receipt of complaints from members during the contract period is not irrelevant.

For the same reason we do not find the Union's delay in asserting its rights under the contract necessarily compels our finding that such information is not now relevant and necessary. We agree with the Union that it is entitled to wait until a number of complaints have been received to determine whether a complaint is simply a clerical error or whether there is a pattern demonstrating that Respondent has subcontracted bargaining unit work.

[12] In finding Davis' conversation with Ramirez "now too remote in time to support any claim of relevancy," the Administrative Law Judge relied on the Ramirez conversation having taken place 1-2 years before the hearing herein on May 21, 1980. However, in determining whether evidence is remote in time, the issue must be resolved solely on the basis of the time that lapsed prior to the October 29, 1979, request and without any concern as to how much time has passed since the date of the request.

Accordingly, we find that the reasonable or probable relevance of the information requested by the Union has been established and that Respondent was, and is, obligated to furnish the information requested.[13] We further find that Respondent, by failing and refusing to provide the information requested by the Union, violated and is violating Section 8(a)(5) and (1) of the Act.[14]

CONCLUSIONS OF LAW

1. Realty Maintenance Inc., d/b/a National Cleaning Company, is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Hospital and Service Employees Union, Local 399, Service Employees International Union AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By failing and refusing to provide the Union with the information it requested in its letters to Respondent dated October 19, 1979, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that by the aforementioned conduct Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist from such conduct in the future and to take certain affirmative action designed to effectuate the policies of the Act.

As we have found that Respondent refused to give to the Union relevant information which it requested for the purposes of enabling it to evaluate and pursue its grievance, we shall order that Respondent furnish the Union with the information it

[13] *Doubarn Sheet Metal, Inc., supra.*

[14] As the Administrative Law Judge dismissed the complaint in its entirety, he found it unnecessary to pass upon Respondent's second affirmative defense in which Respondent asserts that the information requested was based upon an unlawful provision in the Maintenance Contractors Agreement, referring to art. XX, sec. C. However, the burden of going forward shifts to Respondent to establish an affirmative defense once the General Counsel has established a *prima facie* case. See *American Hospital Association*, 230 NLRB 54 (1977). Respondent here does not explain how the provision is violative of Sec. 8(e) and therefore has not met this burden. Further, even if art. XX is an unlawful provision, Respondent's position is still without merit as the Union's letters made no reference to art. XX of the contract, but instead referred to other contractual provisions. Since the information requested, as discussed above, relates to those other provisions and if provided would enable the Union to determine if the grievances of its members have merit, a legitimate purpose has been established for the request of information. We therefore find that Respondent's defense fails. See *General Corporation*, 215 NLRB 351, 354 (1974).

requested concerning Respondent's relationship with the companies named in the Union's letters of October 19, 1979.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Realty Maintenance, Inc., d/b/a National Cleaning Company, Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, by refusing to furnish it with the information requested by it in its letters to Respondent dated October 19, 1979.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, by furnishing said labor organization with the information it requested by its letters dated October 19, 1979.

(b) Post at its Los Angeles, California, place of business copies of the attached notice marked "Appendix"[15] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[15] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO, by failing and refusing to furnish said labor organization with the information requested in the Union's letters to us dated October 19 1979.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, furnish Hospital and Service Employees Union, AFL-CIO, with the information requested in the Union's letters to us dated October 19, 1979.

REALTY MAINTENANCE, INC., D/B/A
NATIONAL CLEANING COMPANY

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge: This case was heard before me at Los Angeles, California, on May 21, 1980,[1] pursuant to a complaint issued by the Regional Director for the National Labor Relations Board for Region 31, on January 8, 1980, and which is based upon a charge filed by Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL-CIO (herein called Union), on November 20. The complaint alleges that the Respondent, Realty Maintenance, Inc., d/b/a National Cleaning Company (herein called Respondent), has engaged in certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (herein called the Act).

Issue

Whether Respondent violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with certain requested information which Respondent had a legal duty to produce.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, the Charging Party, and Respondent.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

[1] All dates herein refer to 1979 unless otherwise indicated.

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS

Respondent admits that the Employer is a New Jersey corporation engaged in the business of providing maintenance services to various nonretail business enterprises and having an office and principal place of business located in Los Angeles, California. It further admits that during the past year, in the course and conduct of its business, the Employer has sold goods and services valued in excess of $50,000 to customers or business enterprises within the State of California, which customers or business enterprises themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standard. Accordingly, it admits, and I find, that the Employer is engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7).

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

A. *The Facts*

Respondent and the Union have had a collective-bargaining relationship extending back several years. The current agreement runs from March 1, 1978, to February 28, 1981. (G.C. Exh. 2.) Article II, section 2, of the Agreement prohibits subcontracting[2] and article XVI of the Agreement requires the Employer to make certain contributions to the employee health and welfare plan. A union official named Richard Davis testified that beginning in March 1978 he began to receive reports from members employed by Respondent that they were not receiving benefits to which they were entitled by virtue of the two articles referred to above and possibly other articles of the Agreement. For example, about 1–2 years ago, a member named Ramirez complained to Davis that while he had been employed by Respondent he was receiving $4 per hour, while Respondent's other employees were receiving $5.20 per hour. In addition, Ramirez showed Davis his pay stub and it had a name on it different from Respondent's. Within the same time frame, about four or five other members complained to Davis that they were unable to collect health and welfare benefits as required by the Agreement.

Based on his receipt of these complaints, Davis sent two letters to Respondent on October 19, seeking certain information. The letters are virtually identical except one refers to Maintenance Development Ecology, Inc., and the other refers to General Building Service Company. The letter reads as follows:

National Cleaning Company
3500 West First Street
Los Angeles, California 90004

Attn: John Scharler, Vice President

Dear Mr. Scharler:

It has come to our attention that your Company is or may be in violation of the Maintenance Contractors Agreement effective March 1, 1978 by reason of the operation by your Company or its principals of another company, General Building Service Company, or by the performance of work which would otherwise be performed by your Company. Specifically, we believe there is or may be a violation of Articles I, II, III, IV, VIII, IX, XI, XII, XIII, XIV, XVII, XVIII, XXII and possibly other Articles.

General Building Service Company is presently performing some services that were previously performed by your Company with your employees. In addition, we believe that there is a connection between your Company and General Building Service Company, either financially or through management personnel or both, and that the object of creating General Building Service Company was to circumvent the provisions of the Maintenance Contractors Agreement and undermine the Union.

This letter constitutes a grievance under Article XIX of the Agreement. We wish to meet at your earliest convenience to attempt to settle this grievance. In order to resolve this grievance, we request that you prepare answers to the following questions for the period January 1, 1979, to the present.

1. What positions, including management and supervisory, in General Building Service Company, have been or are currently held by each officer, shareholder, director, management employee or supervisory employee of your Company.

2. Identify the person who occupied the positions set forth in your response to the first question and identify the period of time which that person held the position stated.

3. What positions, including management and supervisory, in General Service Company, have been or are held by former officers, shareholders, directors, management employees or supervisory employees of your Company.

4. Identify the person who occupied the positions set forth in your response to the third question and identify the period of time which that person held the position stated.

5. Which officers, shareholders, directors, management employees or supervisory employees in your Company had or have an ownership interest in or financial control of General Building Service Company.

6. For each position identified, state the name of the person who occupied the position, the period of time which that person occupied that position, and the ownership interest or financial control which

[2] This provision reads in pertinent part as follows:

A. The Employer shall not subcontract any work as described by the classifications set forth in this Agreement to any employee, person, or company, except pest control and/or gardening.

that person had or does have with respect to General Building Service Company.

7. Which former officers, shareholders, directors, management employees or supervisory employees of your Company had or have an ownership interest in or financial control of General Building Services Company.

8. For each person identified, state the name of the person who occupied the position, the period of time which that person occupied that position, and the ownership interest or financial control which that person had or does have with respect to General Building Services Company.

9. State the name of each supervisory employee or management employee of your Company who performs or has performed supervisory or management functions for General Building Service Company and identify the period of time which that employee has performed those functions.

10. What equipment and/or supplies have been or are furnished by your Company to General Building Service Company for use by General Building Service Company.

11. What locations were under contract by your Company which have been or are currently being cleaned by employees of General Building Service Company.

12. State the name of each supervisory employee or management employee of General Building Service Company who controls the labor relations policy for General Building Service Company.

13. Identify the position that Tom Spears has with your Company and what position, if any, he had or had with General Building Service Company.

Please submit the information within ten days of the date of this letter so that we can commence the grievance procedure set forth in Article XIX of the Maintenance Contract Agreement.

Yours very truly,

/s/ Dick Davis
Vice-President

DD:em
haseu #399
afl cio

cc: James Zellers, President
Howard Rosen, Esquire

The two letters sent by Davis were themselves answered by three letters, two from Attorney Henry J. Silberberg, the first dated October 29, and the second dated November 8. The third letter was from Respondent's counsel at hearing, Attorney Robert M. Sprague.[3] These three letters read as follows:

October 29, 1979
Mr. Dick Davis
Vice President
Local 399
1247 West Seventh Street
Los Angeles, California 90017

Dear Mr. Davis:

We represent Realty Maintenance, Inc., successor by merger to National Kinney of California, Inc. Your letters of October 19, 1979 have been referred to us for reply. We are studying your requests and plan to be able to respond on or before November 9.

Sincerely,

/s/ Henry J. Silberberg

HJS;erb
cc: Mr. John P. Scharler

November 8, 1979

Mr. Dick Davis
Vice President
Local 399
1247 West Seventh Street
Los Angeles, California 90016

Dear Mr. Davis:

In my letter to you dated October 29, 1979, I indicated that we would be studying your requests contained in your letters of October 19 and that we would respond to them on or before November 9. We have concluded that your requests are inappropriate at this time. We believe that even if the information which you have requested is available to Realty Maintenance, Inc., that the collective bargaining agreement does not entitle you to such information. Further, we believe that the provision in the collective bargaining agreement upon which your requests are grounded is invalid.

Sincerely,

/s/ Henry J. Silberberg

HJS:erb

December 5, 1979

Mr. Dick Davis, Vice President
Hospital and Service Employees Union,
Local 399, SEIU
1247 West 7th Street
Los Angeles, California 90057

Re: National Cleaning Company

Dear Mr. Davis:

This letter is to supplement Mr. Silberberg's letter to you of November 8, 1979.

While your letter of October 19, 1979 do not relate to subcontracting, please be advised that during the period in question National Cleaning Company did not subcontract janitorial services to a General Building Service Company, a Maintenance Development Ecology, Inc. or to any other company.

[3] The third letter was sent apparently in direct response to the filing of the charge with the Board (Resp. br., p.2).

The other information you have requested is, of course, irrelevant to any issue relating to subcontracting and, hence, your request is inappropriate.

Very truly yours,
JACKSON, LEWIS, SCHNITZLER & KRUPMAN
/s/ Robert M. Sprague
RMS:gh

B. *Analysis and Conclusions*

I begin with the case of *Doubarn Sheet Metal, Inc.*, 243 NLRB 821, 823 (1979), a case which bears several similarities to the present case.[4] There, an employer was ordered to produce certain information in response to a union's request. The case is important first because it contains a statement of law which governs the disposition of the present case:

> [A]n employer has an obligation, as part of its duty to bargain in good faith, to provide information needed by a bargaining representative for the proper performance of its duties. This obligation to furnish information extends beyond the period of contract negotiations and applies to labor management relations during the term of an agreement, including the evaluation of grievances. Further, an employer cannot refuse to furnish requested information on the basis that the bargaining representative seeks information regarding matters outside the scope of the bargaining unit represented by the union. In regard to this employer obligation to supply information, the following language from *Ohio Power Co.* [5] sets forth the standards of relevance to be applied:
>
> > Where the information sought covers the terms and conditions of employment within the bargaining unit, thus involving the core of the employer-employee relationship, the standard of relevance is very broad, and no specific showing is required; but where the request is for information with respect to matters occurring outside the unit, the standard is somewhat narrower (as where the precipitating issue or conduct is the subcontracting of work performable by employees within the appropriate unit) and relevance is required to be somewhat more precise . . . . The obligation is not unlimited. Thus where the information is plainly irrelevant to any dispute there is no duty to provide it.
>
> It was also noted in *Ohio Power Co.* that the information sought need not be totally dispositive of a grievance or a dispute. Rather, a union is entitled to its requested information in order to determine whether it should exercise its representative function by filing a grievance or bargaining about a dispute.

[4] E.g., letters sent by Davis to Respondent on October 19 appear to have been copied from a letter sent by the union to the employer in *Doubarn.*

[5] 216 NLRB 987, 991 (1975).

In addition, *Doubarn* is important because there, as here, the Union sought to obtain information regarding the business relationship between Respondent and another company. Because the Union's request related to matters occurring outside the bargaining unit, the Union was required to demonstrate an adequate level of relevance.[6] This standard was satisfied in *Doubarn*; however, I find in the present case that the record does not reflect sufficient relevancy and, consequently, Respondent was under no duty to comply.[7] I make this finding for two reasons.

First, the testimony of Davis, the only witness to testify, and the other evidence of record, does not establish a nexus between the information possessed by the Union and the request for information about Respondent's alleged relationship with two other companies, General Building Service Company, and Maintenance Development Ecology, Inc. Thus, a member named Ramirez, who never testified, complained to Davis that he was making less than scale. His pay stub had a name on it different from Respondent's. Other members, whose names Davis could not recall, complained to him that they were not receiving health and welfare benefits as required by the Agreement. Nowhere in the testimony of Davis, nor in any of the exhibits, can I find a nexus between the complaints received by Davis—such as they were—and the two companies about which information is requested. The record is silent as to where these names came from and how they are relevant to the complaints received by Davis. In addition, I can find no convincing connection between the complaints made to Davis and the Union's suspicion of possible subcontracting by Respondent in violation of the contract.

These material gaps in the evidence should be compared to the facts in the *Doubarn* case. There, the Union sought to obtain information regarding the business relationship between respondent and a company called Stainless Steel, Inc. In finding the requisite showing of relevance and necessity, the Board discussed (243 NLRB at 822) certain information received by the Union which raised reasonable grounds to believe that respondent may be violating certain provisions of its collective-bargaining agreement:

1. That Stainless used drawings and blueprints prepared and provided to Stainless by Respondent in the fabrication and installation of sheet metal for another company named Sambo's.

2. That Stainless was performing work for Sambo's, which work was previously performed by others, including Respondent.

3. That employees of Stainless were performing sheet metal fabrication and installation work for Sambo's,

[6] *San Diego Newspaper Guild* v. *N.L.R.B.*, 548 F.2d 863, 867-868 (9th Cir. 1977).

[7] See *Westinghouse Electric Corporation*, 239 NLRB 106, 109-110 (1978).

which work was previously performed by employees of Respondent.

4. That all of the sheet metal fabrication done by employees of Stainless was performed for Sambo's.[7] Moreover, based on "the admitted connections between Doubarn and Stainless . . . and the information received by the Union as to the work being performed by Stainless [the Board found at 824 that] the Union has made an initial showing that the information sought is relevant and necessary for its evaluation and pursuit of its grievance."[8]

In sum, the Union's request in the instant case must be denied, because as the Board held in *Union-Tribune Publishing Co.*, 220 NLRB 1226 (1975), enfd. 548 F.2d 863 (9th Cir. 1977), where the Union makes no showing of relevance, the information sought could have "no rational bearing on the challenge posed by the grievance." Accordingly, I find no relevance demonstrated for requesting information from Respondent on the relationship between it and the two named companies.[9]

The second basis on which I rely for denying production in this case is the remoteness of the alleged relevancy. Davis testified that most of the conversation with the unnamed members occurred "couple or three years, over that period of time." The single specific conversation which Davis could recall and apparently the last as well, involving a member named Ramirez, occurred 1–2 years ago. This evidence indicates first that to the extent the Union's evidence was relevant at all, it is now too remote in time to support any claim of relevancy.[10] Moreover, the fact that union officials did not attempt to assert any rights under the contract for a period of 1–3 years after they were advised of members' complaints directly rebuts their present contention that such information is now relevant and necessary for them to administer the rights of employees covered by the contract. No evidence at all was presented to explain or justify the delay in seeking the information at issue here.[11] This further indicates to me the Union here is relying on no more than suspicion or surmise in seeking the information at issue. Accordingly, I will recommend to the Board that this case be dismissed in its entirety.[12]

CONCLUSIONS OF LAW

1. Realty Maintenance, Inc., d/b/a National Cleaning Company, is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Hospital and Service Employees Union, Local 399, Service Employees International Union, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not engaged in the unfair labor practices alleged in the complaint.

[Recommended Order for dismissal omitted from publication.]

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[7] Still another factor deemed important in *Doubarn* was that the amount of work which Respondent performs for Sambo's has decreased since 1974. In *Associated General Contractors of California*, 242 NLRB 891 (1979), the Board ordered certain information to be produced, relying in part on evidence showing a general decline in the number of carpenters employed and a similar decline in hours worked (at fn. 6). No such evidence is present here. Accordingly, the Union's case for production of the information is further weakened since erosion of bargaining-unit work is a critical factor in finding the requisite relevance and necessity.

[8] See also fn. 13 of *Doubarn*.

[9] Since the Union's request must be rejected *in toto*, it is unnecessary to consider *seriatim* the specific material requested in the Davis letters.

[10] *American Standard, Inc.*, 203 NLRB 1132, 1133 (1973).

[11] Cf. *Fawcett Printing Corporation*, 201 NLRB 964, 971 (1973).

[12] Because of the disposition of this case, it is not necessary for me to discuss Respondent's suggestion of mootness contained in its letter of December 5 and its brief. Neither is it necessary for me to discuss the 8(e) issue raised by Respondent's second affirmative defense.